

BOARD OF ZONING APPEALS

**Springfield, Ohio
Wednesday January 20, 2021
7:00 P.M.
Virtual Meeting**

**Meeting Minutes
(Summary format)**

Chairperson Ms. Dori Gaier called the meeting to order at 7:00 P.M.

MEMBERS PRESENT: Mr. Charles Harris, Ms. Rhonda Zimmers, Mr. James Burkhardt, Mr. Mathew Ryan, Mr. Mark Brown, Ms. Denise Williams and Ms. Dori Gaier.

MEMBERS ABSENT: Mr. Burkhardt.

OTHERS PRESENT: Stephen Thompson, Planning, Zoning, and Code Administrator
Cheyenne Pinkerman, Community Development Specialist.

* * * * *

Case #21-A-01 Request from James Payton for a conditional use permit for cargo containers at 1928, 1930, & 1936 Lagonda Ave. in a CC-2, Community Commercial Residence District.

Ms. Gaier stated that the public hearing was now open and asked for Mr. Thompson to read the staff report.

The applicant seeks a conditional use permit to keep cargo containers on site. The containers are used to store tires. The containers were placed without any permits and this began as a Code Enforcement complaint.

ANALYSIS for Conditional Use:

In considering an application for a conditional use, the Board shall give due regard to the nature and condition of all adjacent uses and structures, and the consistency therewith of the proposed use and development. Before authorizing a use as a conditional use, the Board shall review the facts and circumstances of each proposed conditional use in terms of the following standards and shall find adequate evidence showing that the proposed conditional use at the proposed location:

- (1) Would not be hazardous, harmful, noxious, offensive or a nuisance to the surrounding neighborhood by reason of noise, smoke, odor, vibration, dust and dirt, cinders, noxious gases, glare and heat, fire and safety hazards, sewage wastes and pollution, transportation and traffic, aesthetic and psychological effects. The Board shall use and give recognition to those performance standards which are available in model codes or ordinances, or have been developed by planning, manufacturing, health, architectural and engineering organizations, and can be applied to the proposed use, to assist it in reaching a fair and objective decision;

Staff Comment: It would not.

- (2) Is in fact a conditional use as established under the provisions of this Springfield Zoning Code as eligible to be permitted in the district involved;

Staff Comment: Yes.

- (3) Will be harmonious with and in accordance with the general objectives, or with any specific objective of this Springfield Zoning Code;

Staff Comment: Yes.

- (4) Will be designed, constructed, operated and maintained as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity and that the use will not change the essential character of the same area;

Staff Comment: Yes.

- (5) Will be served adequately by essential public facilities and services such as highways, streets, police and fire protection, drainage structures, refuse disposal, water and sewer, and schools, or that the persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately any such services;

Staff Comment: Yes.

- (6) Will not create excessive additional requirements at public cost for public facilities and services and will not be detrimental to the economic welfare of the community;

Staff Comment: It will not.

- (7) Will have vehicular approaches to the property, which shall be so designed as not to create an interference with traffic on surrounding public thoroughfares. Upon authorizing a conditional use, the Board shall impose such requirements and conditions with respect to location, construction, maintenance and operation, in addition to those expressly stipulated in this Springfield Zoning Code for the particular conditional use, as the Board may deem necessary for the protection of adjacent properties and the public interest.

Staff Comment: Yes.

RETURNED REPORTS FROM STAFF:

Service Department: Recommend approval

Building Inspections: Recommend approval as long as they meet State requirements for the containers

Engineering Division: Recommend approval

Fire Department: Recommend approval

City Manager's Office: Recommend approval

STAFF RECOMMENDATION:

Approval of the conditional use permit.

Ms. Gaier asked if the board had any further questions for Mr. Thompson.

Ms. Gaier questioned if the complaint from a citizen or was it discovered by a code enforcement.

Mr. Thompson stated it was a citizen complaint about several locations around town that have containers on their property. Mr. Thompson explained there were several but two owners to action to get proper permits in place, one was heard last month already.

Ms. Zimmers questioned if the cargo container had to meet the state requirement and wondered if the container in question met the requirements.

Mr. Thompson explained the owner still had to go through the process with the building department.

Mr. Harris asked if there would be more than one container.

Mr. Thompson stated there were multiple on the property and that's also why they need to variance, which would be discussed in the following case.

Ms. Zimmers asked if the board could require screening.

Mr. Thompson stated that was correct and they could add the recommendation into the motion.

Ms. Gaier asked if the board had any further questioned for Mr. Thompson. Hearing none, Ms. Gaier asked if the applicant wished to speak.

Mr. Mark Roberts. Attorney for the applicant.

Mr. Roberts stated they were just there to answer any questions. Mr. Roberts explained they had no problem screening the containers.

Ms. Gaier asked if the board had any further questions for applicant. Hearing none, Ms. Gaier asked if there were any further questions or if anyone else wished to speak. Hearing none, Ms. Gaier asked for a motion to close the public hearing.

MOTION: Mr. Brown made a motion to close the public hearing. Seconded by Ms. Zimmers. Approval by voice vote.

Ms. Gaier stated that the public hearing was now closed and asked for a motion to approve Case #21-A-01.

MOTION: Motion by Ms. Williams to approve the conditional use with the condition they be screened as approved by the City. Seconded by Mr. Brown.

Hearing no further discussion or questions, the Board determined the following findings of facts:

1. The Board has approved similar containers in the past.
2. There is no opposition.
3. The container shall be screened.

Yeas: Mr. Ryan, Ms. Zimmers, Ms. Harris, Mr. Brown, Ms. Williams and Ms. Gaier.

Nays: None.

Motion approved 6 to 0.

Case #21-A-02 Request from James Payton for a variance from Chapter 1135.27 to allow for cargo containers more than 7% of the area of existing structures at 1928, 1930, & 1936 Lagonda Ave. in a CC-2, Community Commercial Residence District.

Ms. Gaier stated that the public hearing was now open and asked for Mr. Thompson to read the staff report.

The applicant seeks a variance to keep cargo containers on site that exceed 7% of the current building. There are multiple containers on site. The containers were placed without obtaining any permits.

Chapter 1135.27(e) states "Cargo containers exceeding 120 square feet are allowed in commercially zoned districts only as a conditional use. They may not be located in any setback required by zoning, nor be placed upon required parking, nor may their combined area exceed 7% of the floor area of the permanent structures on the site. They cannot be stacked."

ANALYSIS for Variance:

The Board may grant a variance only where there exists a “practical difficulty” as defined by the courts in Ohio in established case law. The Ohio Supreme Court’s decision in Kisil v. City of Sandusky, (1984) 12 Ohio State 3d 30, is a land mark decision in establishing common law governing variances by distinguishing between “use” and “area variances.” Area variances involve an exception from such requirements as yard, lot, and height standards. The Supreme Court established that a practical difficulty must exist before an area variance can be granted.

Then subsequent to this case, in Duncan v. Village of Middlefield, (1986) 23 Ohio 3d 83, the Ohio Supreme Court more fully explained the practical difficulty standards. The factors to be considered and weighed in determining whether a property owner seeking a variance has encountered a practical difficulty in the use of his/her property include, but are not limited to:

1. Whether the property in question will yield a reasonable return or whether there can be any beneficial use of the property without the variance;

Staff Comment: Yes.

1. Whether the variance is substantial;

Staff Comment: Yes.

1. Whether the essential character of the neighborhood will be substantially altered or whether adjoining properties would suffer a substantial detriment as a result of the variance;

Staff Comment: No.

1. Whether the variance would adversely affect the delivery of government services (e.g., water, sewer);

Staff Comment: No.

1. Whether the property owner purchased the property with the knowledge of the zoning restrictions;

Staff Comment: No.

1. Whether the property owner's predicament can be obviated through some method other than a variance; or

Staff Comment: Yes. A permanent structure can be built to store tires.

1. Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance.

Staff Comment: Yes.

RETURNED REPORTS FROM STAFF:

Service/Engineering Department: Recommend approval

Building Inspections: Recommend approval as long as they meet State requirements for the containers

Engineering Division: Recommend approval

Fire Department: Recommend approval

City Manager's Office: Recommend approval

STAFF RECOMMENDATION:

Approval of the variance.

Ms. Gaier asked if the board had any questions for Mr. Thompson. Hearing none, Ms. Gaier asked if there were any further questions for the applicant. Hearing none, Ms. Gaier asked if there was anyone else that wished to speak. Hearing none, Ms. Gaier asked for a motion to close the public hearing.

MOTION: Ms. Zimmers made a motion to close the public hearing. Seconded by Mr. Harris. Approval by voice vote.

Ms. Gaier stated that the public hearing was now closed and asked for a motion to approve Case #21-A-02.

MOTION: Motion by Mr. Harris to approve the variance to allow cargo containers over 7% of existing floor area. Seconded by Mr. Ryan.

Hearing no further discussion or questions, the Board determined the following findings of facts:

1. The Board has approved similar containers in the past.

2. There is no opposition.
3. The container shall be screened.

YEAS: Mr. Harris, Ms. Zimmers, Mr. Ryan, Mr. Brown, Ms. Williams and Ms. Gaier
NAYS: None.

Motion approved 6 to 0.

Case #21-A-03 Request from James Payton for a conditional use to allow for a cargo container at 1717 W North St. in a CI-1, Intensive Commercial District.

Ms. Gaier stated that the public hearing was now open and asked for Mr. Thompson to read the staff report.

The applicant seeks a conditional use permit to keep cargo containers on site. The containers are used to store tires. The containers were placed without any permits and this began as a Code Enforcement complaint.

ANALYSIS for Conditional Use:

In considering an application for a conditional use, the Board shall give due regard to the nature and condition of all adjacent uses and structures, and the consistency therewith of the proposed use and development. Before authorizing a use as a conditional use, the Board shall review the facts and circumstances of each proposed conditional use in terms of the following standards and shall find adequate evidence showing that the proposed conditional use at the proposed location:

- (1) Would not be hazardous, harmful, noxious, offensive or a nuisance to the surrounding neighborhood by reason of noise, smoke, odor, vibration, dust and dirt, cinders, noxious gases, glare and heat, fire and safety hazards, sewage wastes and pollution, transportation and traffic, aesthetic and psychological effects. The Board shall use and give recognition to those performance standards which are available in model codes or ordinances, or have been developed by planning, manufacturing, health, architectural and engineering organizations, and can be applied to the proposed use, to assist it in reaching a fair and objective decision;

Staff Comment: It would not.

- (2) Is in fact a conditional use as established under the provisions of this Springfield Zoning Code as eligible to be permitted in the district involved;

Staff Comment: Yes.

- (3) Will be harmonious with and in accordance with the general objectives, or with any specific objective of this Springfield Zoning Code;

Staff Comment: Yes.

- (4) Will be designed, constructed, operated and maintained as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity and that the use will not change the essential character of the same area;

Staff Comment: Yes.

- (5) Will be served adequately by essential public facilities and services such as highways, streets, police and fire protection, drainage structures, refuse disposal, water and sewer, and schools, or that the persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately any such services;

Staff Comment: Yes.

- (6) Will not create excessive additional requirements at public cost for public facilities and services and will not be detrimental to the economic welfare of the community;

Staff Comment: It will not.

- (7) Will have vehicular approaches to the property, which shall be so designed as not to create an interference with traffic on surrounding public thoroughfares. Upon authorizing a conditional use, the Board shall impose such requirements and conditions with respect to location, construction, maintenance and operation, in addition to those expressly stipulated in this Springfield Zoning Code for the particular conditional use, as the Board may deem necessary for the protection of adjacent properties and the public interest.

Staff Comment: Yes.

RETURNED REPORTS FROM STAFF:

Service Department: Recommend approval

Building Inspections: Recommend approval as long as they meet State requirements for the containers

Engineering Division: Recommend approval

Fire Department: Recommend approval

City Manager's Office: Recommend approval

STAFF RECOMMENDATION:

Approval of the conditional use permit.

Ms. Gaier asked if the board had any questions for Mr. Thompson. Hearing none, Ms. Gaier asked if the applicant wished to speak. Hearing none, Ms. Gaier asked if there was anyone else that wished to speak. Hearing none, Ms. Gaier asked for a motion to close the public hearing.

MOTION: Ms. Williams made a motion to close the public hearing. Seconded by Mr. Harris. Approval by voice vote.

Ms. Gaier stated that the public hearing was now closed and asked for a motion to approve Case #21-A-03.

MOTION: Motion by Mr. Ryan to approve the conditional use with the condition they be screened as approved by the City. Seconded by Mr. Harris.

Hearing no further discussion or questions, the Board determined the following findings of facts:

1. The Board has approved similar containers in the past.
2. There is no opposition.
3. The container shall be screened.

YEAS: Mr. Harris, Ms. Zimmers, Mr. Ryan, Mr. Brown, Ms. Williams and Ms. Gaier
NAYS: None.

Motion approved 6 to 0.

Case #21-A-04 Request from James Payton for a variance from Chapter 1135.27 to allow for cargo containers more than 7% of the area of existing structures at 1717 W North St. in a CI-1, Intensive Commercial Residence District.

Ms. Gaier stated that the public hearing was now open and asked for Mr. Thompson to read the staff report.

The applicant seeks a variance to keep cargo containers on site that exceed 7% of the current building. There are multiple containers on site. The containers were placed without obtaining any permits.

Chapter 1135.27(e) states "Cargo containers exceeding 120 square feet are allowed in commercially zoned districts only as a conditional use. They may not be located in any setback required by zoning, nor be placed upon required parking, nor may their combined area exceed 7% of the floor area of the permanent structures on the site. They cannot be stacked."

ANALYSIS for Variance:

The Board may grant a variance only where there exists a “practical difficulty” as defined by the courts in Ohio in established case law. The Ohio Supreme Court’s decision in Kisil v. City of Sandusky, (1984) 12 Ohio State 3d 30, is a land mark decision in establishing common law governing variances by distinguishing between “use” and “area variances.” Area variances involve an exception from such requirements as yard, lot, and height standards. The Supreme Court established that a practical difficulty must exist before an area variance can be granted.

Then subsequent to this case, in Duncan v. Village of Middlefield, (1986) 23 Ohio 3d 83, the Ohio Supreme Court more fully explained the practical difficulty standards. The factors to be considered and weighed in determining whether a property owner seeking a variance has encountered a practical difficulty in the use of his/her property include, but are not limited to:

1. Whether the property in question will yield a reasonable return or whether there can be any beneficial use of the property without the variance;

Staff Comment: Yes.

1. Whether the variance is substantial;

Staff Comment: Yes.

1. Whether the essential character of the neighborhood will be substantially altered or whether adjoining properties would suffer a substantial detriment as a result of the variance;

Staff Comment: No.

1. Whether the variance would adversely affect the delivery of government services (e.g., water, sewer);

Staff Comment: No.

1. Whether the property owner purchased the property with the knowledge of the zoning restrictions;

Staff Comment: No.

1. Whether the property owner's predicament can be obviated through some method other than a variance; or

Staff Comment: No.

1. Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance.

Staff Comment: Yes.

RETURNED REPORTS FROM STAFF:

Service/Engineering Department: Recommend approval

Building Inspections: Recommend approval as long as they meet State requirements for the containers

Engineering Division: Recommend approval

Fire Department: Recommend approval

City Manager's Office: Recommend approval

STAFF RECOMMENDATION:

Approval of the variance.

Ms. Gaier asked if the board had any questions for Mr. Thompson.

Ms. Gaier questioned where the containers were located.

Mr. Thompson explained where the containers were located.

Ms. Gaier asked if the board had any further questions for the Mr. Thompson. Hearing none, Ms. Gaier asked if the applicant or the applicants agent wished to speak. Hearing none, Ms. Gaier asked if there was anyone else that wished to speak. Hearing none, Ms. Gaier asked for a motion to close the public hearing.

MOTION: Ms. Zimmers made a motion to close the public hearing. Seconded by Ms. Williams. Approval by voice vote.

Ms. Gaier stated that the public hearing was now closed and asked for a motion to approve Case #21-A-04.

MOTION: Motion by Ms. Zimmers to approve the variance to allow cargo containers over 7% of existing floor area. Seconded by Mr. Ryan.

Hearing no further discussion or questions, the Board determined the following findings of facts:

1. The Board has approved similar containers in the past.
2. There is no opposition.
3. The container shall be screened.

YEAS: Mr. Harris, Ms. Zimmers, Mr. Burkhardt, Mr. Ryan, Mr. Brown, Ms. Williams and Ms. Gaier

NAYS: None.

Motion approved 7 to 0.

Case #21-A-05 Request from James Payton for a variance from Chapter 1135.27 to allow cargo containers in a residential district at 228 & 232 Selma Rd. in a RS-8, Medium-Density, Single-Family Residence District.

Ms. Gaier stated that the public hearing was now open and asked for Mr. Thompson to read the staff report.

The applicant seeks a variance to keep cargo containers on site in a residential district. There are multiple containers on site. The containers were placed without obtaining any permits.

Chapter 1135.27(d) states "Cargo containers exceeding 120 square feet are allowed in residentially zoned districts only if in active use for the storage of construction materials for ongoing permitted construction, or for a maximum period of seven consecutive days in association with the relocation of the contents of a residential structure.

ANALYSIS for Variance:

The Board may grant a variance only where there exists a "practical difficulty" as defined by the courts in Ohio in established case law. The Ohio Supreme Court's decision in Kisil v. City of Sandusky, (1984) 12 Ohio State 3d 30, is a land mark decision in establishing common law governing variances by distinguishing between "use" and "area variances." Area variances involve an exception from such requirements as yard, lot, and height standards. The Supreme Court established that a practical difficulty must exist before an area variance can be granted.

Then subsequent to this case, in Duncan v. Village of Middlefield, (1986) 23 Ohio 3d 83, the Ohio Supreme Court more fully explained the practical difficulty standards. The factors to be

considered and weighed in determining whether a property owner seeking a variance has encountered a practical difficulty in the use of his/her property include, but are not limited to:

1. Whether the property in question will yield a reasonable return or whether there can be any beneficial use of the property without the variance;

Staff Comment: Yes.

1. Whether the variance is substantial;

Staff Comment: Yes.

1. Whether the essential character of the neighborhood will be substantially altered or whether adjoining properties would suffer a substantial detriment as a result of the variance;

Staff Comment: No.

1. Whether the variance would adversely affect the delivery of government services (e.g., water, sewer);

Staff Comment: No.

1. Whether the property owner purchased the property with the knowledge of the zoning restrictions;

Staff Comment: No.

1. Whether the property owner's predicament can be obviated through some method other than a variance; or

Staff Comment: No.

1. Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance.

Staff Comment: Yes.

RETURNED REPORTS FROM STAFF:

Service/Engineering Department: Recommend approval

Building Inspections: Recommend approval as long as they meet State requirements for the containers

Engineering Division: Recommend approval

Fire Department: Recommend approval

City Manager's Office: Recommend approval

STAFF RECOMMENDATION:

Approval of the variance.

Ms. Gaier asked if the board had any questions for Mr. Thompson.

Ms. Gaier asked if there were any complaints from the surrounding neighbors.

Mr. Thompson stated he received no complaints or calls.

Ms. Williams questioned how visible the containers were.

Mr. Thompson explained the containers were more visible heading east on Selma. Mr. Thompson stated it doesn't stand out in his opinion.

Ms. Zimmers questioned if there were specifics on the previous case for containers on Selma.

Mr. Thompson stated he did not remember there being any specifics as far as Selma road. Mr. Thompson explained there was a fence around the property and the applicant discussed putting slats in the fence, painting and adding shrubbery.

Ms. Gaier asked if the container was visible from Limestone.

Mr. Thompson said it was not.

Ms. Zimmers stated she was concerned for the residential views and asked if there was a fence up to block.

Mr. Thompson said the applicant could answer those questions better.

Mr. Roberts explained the owners house was located right behind the property. Mr. Roberts explained there was a block wall on west facing side and a large arborvitae tree that's blocks the view.

Ms. Gaier asked if the board had any further questions for the applicant. Hearing none, Ms. Gaier asked if there was anyone else that wished to speak. Hearing none, Ms. Gaier asked for a motion to close the public hearing.

MOTION: Ms. Williams made a motion to close the public hearing. Seconded by Ms. Zimmers. Approval by voice vote.

Ms. Gaier stated that the public hearing was now closed and asked for a motion to approve Case #21-A-05.

MOTION: Motion by Mr. Ryan to approve the variance from Chapter 1135.27(d) to allow cargo containers in a residential district. Seconded by Ms. Williams.

Hearing no further discussion or questions, the Board determined the following findings of facts:

1. The Board has approved similar containers in the past.
2. There is no opposition.
3. The container shall be screened.

YEAS: Mr. Harris, Ms. Zimmers, Mr. Ryan, Mr. Brown, Ms. Williams and Ms. Gaier

NAYS: None.

Motion approved 6 to 0.

Elect Chair and Vice Chair for 2021.

Motion by Mr. Brown to keep Ms. Denise Williams as Vice Chairperson and Ms. Dori Gaier as Chairperson. Seconded by Ms. Zimmers.

The Board approved the motion by voice vote.

Board Comments: Ms. Williams stated she wished to continue doing meetings over zoom.

Staff Comments: None.

Subject: Adjournment

Ms. Williams made a motion to adjourn the meeting. Seconded by Ms. Zimmers.

Ms. Gaier adjourned the meeting at 7:55 p.m.

Dori Gaier

dotloop verified
06/28/21 11:06 AM EDT
UXUN-5ZQC-27ST-16PV

Ms. Dori Gaier, Chairperson

Ms. Denise Williams, Vice-Chairperson